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Message Text

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ORIGIN NEA-11

INFO OCT-01 EUR-12 ISO-00 CIAE-00 PM-05 H-02 INR-10
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ACDA-12 MCE-00 OMB-01 TRSE-00 /101 R

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FM SECSTATE WASHDC
TO AMEMBASSY CAIRO
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SECDEF WASHDC 0264

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E.O. 11652: N/A

TAGS: MASS, EG, US

SUBJECT: EGYPTIAN USE OF C-130 IN LARNACA

1. FOLLOWING IS REPLY SUBMITTED TO HIRC IN RESPONE TO QUESTION CONCERNING LEGALITY OF EGYPTIAN USE OF C-130 IN CONNECTION WITH LARNACA INCIDENT.

2. QUOTE: SECTION 3(A) OF THE ARMS EXPORT CONTROL ACT ESTABLISHES AS A CONDITION OF ELIGIBILITY FOR FMS PURCHASES OF DEFENSE ARTICLES AND SERVICES THAT THE PURCHASER SHALL HAVE FIRST AGREED NOT TO USE OR PERMIT THE USE OF THE ARTICLES SO ACQUIRED FOR PURPOSES OTHER THAN THOSE FOR WHICH FURNISHED, WITHOUT THE PRIOR CONSENT OF THE UNITED STATES. IN THE CASE OF THE C-130 AIRCRAFT RECENTLY SOLD TO EGYPT UNDER FMS, THESE PURPOSES ARE LIMITED BY THE TERMS OF THE STANDARD FORM FMS CONTRACT OF SALE TO "INTERNAL SECURITY, INDIVIDUAL SELF-DEFENSE, AND/OR CIVIC ACTION."
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THERE IS AN ESTABLISHED, IF NARROW, RIGHT UNDER INTERNATIONAL LAW TO USE LIMITED FORCE IN FOREIGN TERRITORY FOR THE PROTECTION OF ONE'S OWN NATIONALS FROM AN IMMINENT THREAT OF INJURY OR DEATH IN A SITUATION WHERE THE STATE IN WHOSE TERRITORY THEY ARE LOCATED EITHER IS UNWILLING OR UNABLE TO PROTECT THEM. THIS RIGHT, LIKE THE RIGHT OF

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SELF-DEFENSE FROM WHICH IT FLOWS, IS LIMITED TO SUCH USE OF FORCE AS IS NECESSARY AND APPROPRIATE TO PROTECT THE THREATENED NATIONALS FROM INJURY AND DOES NOT ENCOMPASS ACTS INTENDED TO PUNISH OR EXACT COMPENSATION. THUS THE LEGITIMACY OF A STATE'S RESORT TO ARMED FORCE FOR THE PROTECTION OF ITS NATIONALS CAN TURN ON ANY OF A NUMBER OF FACTORS.

IN THE CASE OF THE UNFORTUNATE INCIDENT AT THE CYPRUS AIRPORT, EGYPTIAN NATIONALS WERE DIRECTLY AND IMMINENTLY THREATENED, AND THE EGYPTIAN ACTION TOOK PLACE IN THE CONTEXT OF SIMILAR ACTIONS TAKEN BY OTHER GOVERNMENTS IN HIJACKING SITUATIONS. HOWEVER, MANY ASPECTS OF THE INCIDENT REMAIN UNCLEAR, AND WE ARE THEREFORE NOT IN A POSITION TO DRAW ANY FIRM CONCLUSIONS ABOUT THE EGYPTIAN ACTIONS.

IN LIGHT OF THE ABOVE, WE DO NOT BELIEVE AT THIS POINT THAT THERE IS AN ADEQUATE BASIS FOR CONCLUDING THAT THE USE OF FMS-ORIGIN AIRCRAFT IN CONNECTION WITH THE ASSAULT WAS INCONSISTENT WITH THE AGREEMENTS UNDER WHICH THOSE AIRCRAFT WERE SOLD. UNQUOTE. CHRISTOPHER

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Litigation History:
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SAS ID: 2769592
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Status: NATIVE
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TAGS: MASS, EG, US
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